IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32448 of 2006(K)

PETITIONER:

T.C.GEORGE, S/O.CHACKO,
THOTTUPURATH HOUSE, MUTHALAKULAM P.O.,
THODUPUZHA.

BY ADV. SRI.V.GIRI

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,
PATTOM PALACE, THIRUVANANTHAPURAM.

2. DEPUTY CHIEF ENGINEER (APTS),
KERALA STATE ELECTRICITY BOARD, ERNAKULAM.

3. ASST.EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, THODUPUZHA.

BY SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 32448/2006

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF ELECTRICITY BILL DATED 15.03.2002 ISSUED FOR THE MONTH OF FEBRUARY TO THE PETITIONER BY THE BAORD.

EXHIBIT P2: TRUE COPY OF BILL DATED 15.04.2002 FOR THE MONTH OF MARCH ISSUED TO THE PETITIONER BY the BOARD.

EXHIBIT P3: TRUE COPY OF BILL DATED 15.05.2002 FOR THE MONTH OF APRIL 2002 ISSUED TO THE PETITIONER BY THE BOARD.

EXHIBIT P4: TRUE COPY OF MAHAZAR DATED 17.06.2002 PREPARED BY ANTI POWER THEFT SQUAD.

EXHIBIT P5: TRUE COPY OF INTIMATION GIVEN TO THE PETITIONER BY THE ASST.ELECT.ENGINEER DATED 18.06.2002.

EXHIBIT P6: TRUE COPY OF BILL ISSUED ON 18.06.2002 ISSUED TO THE PETITIONER BY THE BOARD.

EXHIBIT P7: TRUE COPY OF APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 22.06.2002.

EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 28.06.2002 OF THIS HON'BLE COURT IN O.P.NO.17724/2002.

EXHIBIT P9: TRUE COPY OF ORDER DATED 13.11.2006 OF THE 2ND RESPONDENT.

EXHIBIT P10: TRUE COPY OF THE JUDGMENT DATED 07.11.2006 OF THIS HON'BLE COURT IN O.P.NO.31663/2002.

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMAN, J.

W.P.(C) 32448/2006

DATED THIS, THE 12TH DAY OF DECEMBER, 2006.

J U D G M E N T

Petitioner is a consumer of electricity. On 17.6.2002, the premises of M/s. P.C. Bar & Restaurant owned by him was inspected by the Anti Power Theft Squad (APTS) and a mahazar was prepared. As against the sanctioned load of 15 KW. the connected load was found to be 30 KW. Hence a bill imposing penalty of an amount of Rs. 3,94,821/- was issued to the petitioner. He approached this Court by filing O.P. 17724/2002 and as the appeal was pending, this Court directed the appellate authority to consider and dispose of the same on condition that petitioner shall remit an amount of Rs. 1 lakh. There is no dispute that the petitioner has already remitted the amount. Subsequently, the appeal was considered and disposed of by Ext.P9 order, which is impugned in this writ petition.

2. It is the contention of the petitioner that the appellate authority did not consider as to whether the maximum penalty imposable under

Regulation No. 42(d) should be imposed in this case or whether a lesser penalty should be imposed. He placed reliance on a Division Bench decision of this Court in **A. Salim v. Kerala State Electricity Board & Others** (W.A. NO. 1231/2003) . It is also his case that in para 10 of the aforesaid judgment, it was specifically directed that each case will have to be considered on its merits by the Board in the matter of imposition of penalty and what is provided for in the Regulation is the maximum penalty and therefore, while actually imposing the penalty, different consideration may weigh and it is a matter for consideration by the Appellate Authority and taking into consideration, the mitigating factors, the penalty will have to be reduced in appropriate cases.

3. The learned standing counsel appearing on behalf of the respondent Board, on the other hand, would submit that pursuant to the direction issued by this Court in W.P.(C) 17724/2002, the appellate authority has considered the matter again and passed the order Ext.P9 and the appellate authority has found that in this case, the amount of penalty as imposable as per Regulation No. 42(d) is justified.

4. I have gone though the order passed by the appellate authority, produced as Ext.P9 in this case. The fact that the unauthorized additional

load was regularized by the petitioner has been taken note of so as to find out that there was an unauthorized load earlier. The finding that there was unauthorized load, on the materials placed on record, cannot be interfered with.

5. However, in the matter of imposition of penalty, as held by the Division Bench, whether or not this is a fit case where maximum penalty should be imposed is a matter for consideration. In such circumstances, if the petitioner moves the Electricity Board, being the higher authority, through its Secretary and files a detailed representation pointing out the mitigating circumstance warranting reduction of penalty, the same shall be duly considered by the Board and decide as to whether any reduction in the penalty amount should be given to the petitioner and pass appropriate orders. Since the petitioner has paid Rs. 1 lakh as per the earlier direction of this court, the balance amount as per the impugned bill shall stand stayed for a period of three months. If the petitioner files a representation as aforesaid within three weeks from today, the Board shall consider the same and pass orders in the light of the decision cited supra and subject to what is stated above, within a period of two months thereafter.

Petitioner shall produce a copy of this judgment along with a copy of

the judgment in W.A. No. 1231/2003 before the Board for information and compliance.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-